



General Assembly

January Session, 2001

Amendment

LCO No. 6825

Offered by:

REP. WARD, 86th Dist.

REP. CAFERO, 142nd Dist.

REP. FLAHERTY, 68th Dist.

To: Subst. House Bill No. 5585

File No. 705

Cal. No. 193

**"AN ACT AUTHORIZING THE USE OF TRANSACTION SCAN
DEVICES BY SELLERS OF ALCOHOLIC LIQUOR AND
TOBACCO."**

1 After line 195, add the following:

2 "Sec. 3. (NEW) No person, dealer or distributor, as those terms are
3 defined in section 12-285 of the general statutes, shall use a vending
4 machine to sell or otherwise dispense cigarettes or tobacco products.
5 Any person, dealer or distributor who violates the provisions of this
6 section shall be fined not more than two hundred dollars for the first
7 offense, not more than three hundred fifty dollars for a second offense
8 within an eighteen-month period and not more than five hundred
9 dollars for each subsequent offense within an eighteen-month period.

10 Sec. 4. Section 12-285 of the general statutes is repealed and the
11 following is substituted in lieu thereof:

12 When used in this chapter, unless the context otherwise requires,

13 "person" means any individual, firm, fiduciary, partnership,
14 corporation, limited liability company, trust or association, however
15 formed; "distributor" means (1) any person in this state engaged in the
16 business of manufacturing cigarettes; (2) any person, other than a
17 buying pool, as defined herein, who purchases cigarettes at wholesale
18 from manufacturers or other distributors for sale to licensed dealers,
19 and who maintains an established place of business, including a
20 location used exclusively for such business, which has facilities in
21 which a substantial stock of cigarettes and related merchandise for
22 resale can be kept at all times, and who sells at least seventy-five per
23 cent of such cigarettes to retailers who, at no time, shall own any
24 interest in the business of the distributor as a partner, stockholder or
25 trustee; (3) any person operating five or more retail stores in this state
26 for the sale of cigarettes who purchases cigarettes at wholesale for sale
27 to dealers but sells such cigarettes exclusively to retail stores such
28 person is operating; [(4) any person operating and servicing twenty-
29 five or more cigarette vending machines in this state who buys such
30 cigarettes at wholesale and sells them exclusively in such vending
31 machines. If a person qualified as a distributor in accordance with this
32 subdivision, in addition sells cigarettes other than in vending
33 machines, such person shall be required to be qualified as a distributor
34 in accordance with subdivision (2) of this section and have an
35 additional distributor's license for purposes of such other sales; (5)] (4)
36 any person who imports into this state unstamped cigarettes, at least
37 seventy-five per cent of which are to be sold to others for resale; [(6)]
38 (5) any person operating storage facilities for unstamped cigarettes in
39 this state; ["cigarette vending machine" means a machine used for the
40 purpose of automatically merchandising packaged cigarettes through
41 the insertion of the proper amount of coins therein by the purchaser,
42 but does not mean a restricted cigarette vending machine; "restricted
43 cigarette vending machine" means a machine used for the dispensing
44 of packaged cigarettes which automatically deactivates after each
45 individual sale, cannot be left operable after a sale and requires, prior
46 to each individual sale, a face-to-face interaction or display of
47 identification between an employee of the area, facility or business

48 where such machine is located and the purchaser;] "dealer" means any
49 person other than a distributor who is engaged in this state in the
50 business of selling cigarettes; [, including any person operating and
51 servicing fewer than twenty-five cigarette vending machines who shall
52 be classified herein as a vending machine dealer;] "licensed dealer"
53 means a dealer licensed under the provisions of this chapter; "stamp"
54 includes impressions made by metering machines authorized to be
55 used under the provisions of section 12-299; "sale" or "sell" includes or
56 applies to gifts, exchanges and barter; and "buying pool" means and
57 includes any combination, corporation, association, affiliation or group
58 of retail dealers operating jointly in the purchase, sale, exchange or
59 barter of cigarettes, the profits from which accrue directly or indirectly
60 to such retail dealers, provided any person holding a distributor's
61 license issued prior to June 29, 1951, shall be deemed to be a distributor
62 within the terms of this section. For the purposes of part I and part II
63 only of this chapter, "cigarette" means and includes any roll for
64 smoking made wholly or in part of tobacco irrespective of size or
65 shape and irrespective of whether the tobacco is flavored, adulterated
66 or mixed with any other ingredient, where such roll has a wrapper or
67 cover made of paper or any other material, except where such wrapper
68 is wholly or in the greater part made of tobacco and such roll weighs
69 over three pounds per thousand, provided, if any roll for smoking has
70 a wrapper made of homogenized tobacco or natural leaf tobacco, and
71 the roll is a cigarette size so that it weighs three pounds or less per
72 thousand, such roll is a cigarette and subject to the tax imposed by part
73 I and part II of this chapter; "unstamped cigarette" means any package
74 of cigarettes to which the proper amount of Connecticut cigarette tax
75 stamps or impressions have not been affixed.

76 Sec. 5. Section 12-286 of the general statutes is repealed and the
77 following is substituted in lieu thereof:

78 (a)(1) The commissioner shall, after May 25, 1994, require for an
79 initial application for a distributor's license, in addition to such other
80 information deemed to be necessary, the filing of three affidavits from
81 three recognized manufacturers of cigarettes stating such

82 manufacturers' intent to supply the distributor if the applicant is
83 granted a license. A chain store shall be exempt from filing such
84 affidavits. Any pending application on May 25, 1994, and any person
85 purchasing the business of a licensed distributor shall be exempt from
86 filing such affidavits. For purposes of this subsection, "chain store"
87 means the operator or franchisor of five or more retail establishments
88 with common ownership and control.

89 (2) The commissioner may make public a list of recognized
90 manufacturers of cigarettes.

91 (b) A separate license shall be required for each class of business if
92 the applicant is engaged in business both as a distributor and dealer.
93 The commissioner shall prescribe the form of application for a
94 distributor's license and for a dealer's license. Each license so issued
95 shall be conspicuously displayed on the premises covered by the
96 license.

97 [(c) The commissioner shall make regulations not inconsistent with
98 the law for the licensing of vending machines.]

99 [(d)] (c) The commissioner may, in the commissioner's discretion,
100 refuse to issue a license if there is reasonable ground to believe (1) that
101 the applicant has wilfully made any false statement of substance with
102 respect to such application for license, (2) that the applicant has
103 neglected to pay any taxes due to this state or (3) that the applicant has
104 been convicted of violating any of the cigarette tax laws of this or any
105 other state or the cigarette tax laws of the United States or has such a
106 criminal record that the commissioner reasonably believes that such
107 applicant is not a suitable person to be issued a license, provided no
108 refusal shall be rendered under this subdivision except in accordance
109 with the provisions of sections 46a-80 and 46a-81.

110 [(e)] (d) Any person who knowingly sells, offers for sale or
111 possesses with intent to sell any cigarettes, without a license as
112 provided in this chapter, shall be fined not more than five hundred
113 dollars or imprisoned for not more than three months, or both, for each

114 offense. Each day of such unauthorized operation may be deemed a
115 separate offense.

116 Sec. 6. Section 12-286a of the general statutes is repealed and the
117 following is substituted in lieu thereof:

118 (a) Each distributor and each dealer, as defined in section 12-285,
119 shall place and maintain in legible condition at each point of sale of
120 cigarettes to consumers [, including the front of each vending machine,
121 and each restricted cigarette vending machine] a notice which states (1)
122 that the sale, giving or delivering of tobacco products, including
123 cigarettes, to any person under eighteen years of age is prohibited by
124 section 53-344, (2) the purchase or misrepresentation of age by a person
125 under eighteen years of age to purchase cigarettes or tobacco products
126 is prohibited by said section 53-344, and (3) the penalties and fines for
127 violating said section 53-344 and section 12-295a.

128 (b) Any person who violates subsection (a) of this section shall be
129 fined not more than one hundred dollars.

130 Sec. 7. Section 12-293a of the general statutes is repealed and the
131 following is substituted in lieu thereof:

132 (a) Each licensed distributor and dealer shall file with the
133 Commissioner of Revenue Services, on or before the twenty-fifth day
134 of each month, a report for the calendar month immediately preceding
135 in such form and containing such information as the commissioner
136 may prescribe. The return shall be accompanied by a payment of the
137 amount of the tax shown to be due thereon. The commissioner by
138 regulation may exempt from the monthly reporting requirements of
139 this section those distributors and dealers who do not acquire
140 unstamped cigarettes and in lieu thereof may require an annual report,
141 prescribed as to form by the Commissioner of Revenue Services and
142 bearing notice to the effect that false statements made in such report
143 are punishable, if, in the commissioner's discretion, the enforcement of
144 this chapter would not be adversely affected.

145 [(b) Each licensed distributor or dealer who owns or operates more
146 than five cigarette vending machines shall file with the Commissioner
147 of Revenue Services, on or before the fifteenth day of each month, a
148 report in such form as the commissioner may prescribe for the
149 calendar month immediately preceding, which report shall disclose the
150 number of cigarette vending machines owned, operated, acquired and
151 disposed of by him, together with such other information as the
152 commissioner shall require. Each licensed distributor or dealer who
153 owns or operates not more than five cigarette vending machines shall
154 file such report with the commissioner semiannually, at such time and
155 in such form as the commissioner may prescribe.]

156 [(c)] (b) The commissioner may, by regulations adopted in
157 accordance with chapter 54, require that each distributor and dealer
158 report the names and addresses of their customers annually, with
159 changes in such lists to be reported to the commissioner monthly not
160 later than the twenty-fifth day of each month.

161 [(d)] (c) If any person fails to pay the amount of tax reported due on
162 its report within the time specified under this section, there shall be
163 imposed a penalty equal to ten per cent of such amount due and
164 unpaid, or fifty dollars, whichever is greater. No person shall be
165 subject to a penalty under both this section and subsection (b) of
166 section 12-309. Such amount shall bear interest at the rate of one per
167 cent per month or fraction thereof, from the due date of such tax until
168 the date of payment.

169 [(e)] (d) Subject to the provisions of section 12-3a, the commissioner
170 may waive all or part of the penalties provided under this chapter
171 when it is proven to his satisfaction that the failure to pay any tax was
172 due to reasonable cause and was not intentional or due to neglect.

173 Sec. 8. Section 12-295a of the general statutes is repealed and the
174 following is substituted in lieu thereof:

175 (a) If the Commissioner of Revenue Services finds, after a hearing,
176 that a minor has purchased cigarettes or tobacco products, said

177 commissioner shall assess such minor a civil penalty of not more than
178 fifty dollars for the first violation and not more than one hundred
179 dollars for any second or subsequent offense.

180 (b) If said commissioner finds, after a hearing, that any person
181 employed by a dealer or distributor, as defined in section 12-285, has
182 sold, given or delivered cigarettes or tobacco products to a minor other
183 than a minor who is delivering or accepting delivery in his capacity as
184 an employee, said commissioner shall assess such person a civil
185 penalty of one hundred dollars for the first violation and one hundred
186 fifty dollars for a second or subsequent violation within eighteen
187 months.

188 (c) If said commissioner finds, after a hearing, that any dealer or
189 distributor has sold, given or delivered cigarettes or tobacco products
190 to a minor other than a minor who is delivering or accepting delivery
191 in his capacity as an employee, or such dealer or distributor's
192 employee has sold, given or delivered cigarettes or tobacco products to
193 such minor, said commissioner shall assess such dealer or distributor a
194 civil penalty of two hundred fifty dollars for the first violation and five
195 hundred dollars for a second violation within eighteen months. For a
196 third violation within eighteen months, such dealer or distributor shall
197 be assessed a civil penalty of five hundred dollars and any license held
198 by such dealer or distributor under this chapter shall be suspended for
199 not less than thirty days.

200 [(d) If said commissioner finds, after a hearing, that any owner of an
201 establishment in which a cigarette vending machine or restricted
202 cigarette vending machine is located has sold, given or delivered
203 cigarettes or tobacco products from any such machine to a minor other
204 than a minor who is delivering or accepting delivery in his capacity as
205 an employee, or has allowed cigarettes or tobacco products to be sold,
206 given or delivered to such minor from any such machine, said
207 commissioner shall assess such dealer or distributor a civil penalty of
208 two hundred fifty dollars for the first violation and five hundred
209 dollars for a second violation within eighteen months. For a third

210 violation within eighteen months, such dealer or distributor shall be
211 assessed a civil penalty of five hundred dollars and any such machine
212 shall be immediately removed from such establishment and no such
213 machine may be placed in such establishment for a period of one year
214 following such removal.]

215 [(e)] (d) Any person aggrieved by any action of the commissioner
216 pursuant to this section may take any appeal of such action as
217 provided in sections 12-311 and 12-312.

218 Sec. 9. Subsection (a) of section 12-326a of the general statutes is
219 repealed and the following is substituted in lieu thereof:

220 (a) As used in sections 12-326a to 12-326h, inclusive, (1) "stamping
221 agent" means a licensed distributor other than a buying pool, who
222 purchases cigarettes at wholesale from manufacturers or other
223 distributors for sale to licensed dealers and who maintains an
224 established place of business, including a location used exclusively for
225 such business, which has facilities in which a substantial stock of
226 cigarettes and related merchandise for resale can be kept at all times,
227 and who sells at least seventy-five per cent of such cigarettes to
228 retailers who, at no time, shall own any interest in the business of the
229 distributor as a partner, stockholder or trustee; (2) "subjobber" means a
230 licensed distributor who purchases stamped cigarettes at wholesale for
231 sale to licensed dealers who, at no time, shall own any interest in the
232 business of the distributor as a partner, stockholder or trustee; (3)
233 "chain store" means a licensed distributor [(A)] operating or
234 franchising five or more retail stores in this state for the sale of
235 cigarettes who purchases cigarettes at wholesale either from another
236 distributor or direct from the manufacturer for sale to dealers but sells
237 such cigarettes exclusively in or to retail stores such person is
238 operating or franchising; [or (B) operating and servicing twenty-five or
239 more cigarette vending machines in this state who buys such cigarettes
240 at wholesale and sells them exclusively in such vending machines;] (4)
241 "cost" means the basic cost of cigarettes plus the cost of doing business;
242 (5) "basic cost of cigarettes" means (A) the lower of (i) the invoice cost

243 of the cigarettes to the distributor or dealer, as the case may be, or (ii)
244 the replacement cost in the quantity last purchased, plus (B) the full
245 face value of any stamps which may be required by this chapter, if not
246 already included in the invoice cost, minus (C) all trade discounts, if
247 any, other than cash discounts; (6) "cost of doing business" means the
248 costs, as computed for federal income tax purposes, that are related to
249 the sale of cigarettes, including but not limited to labor costs, including
250 salaries of executives and officers, rent, depreciation, selling costs,
251 maintenance of equipment, delivery costs, interest, licenses, taxes,
252 insurance, advertising, preopening expenses and any central and
253 regional administrative expenses, expressed as a percentage of the
254 basic cost of cigarettes and applied thereto. In applying such
255 percentage to the basic cost of cigarettes, any fractional part of a cent
256 equal to one-tenth or more of one cent per carton of ten packages of
257 cigarettes shall be rounded to the next higher cent.

258 Sec. 10. Section 12-315a of the general statutes is repealed and the
259 following is substituted in lieu thereof:

260 The Commissioner of Revenue Services shall prepare a report on
261 enforcement efforts undertaken pursuant to sections 12-286a, [12-289a,
262 12-295a and 12-314. Such report shall include the number of
263 unannounced inspections conducted by said commissioner, a
264 summary of enforcement actions taken pursuant to said sections and
265 an assessment of the progress made in the previous fiscal year in
266 reducing the availability of tobacco products to minors. Said
267 commissioner shall transmit such report on or before January 1, 1998,
268 and annually thereafter, to the joint standing committee of the General
269 Assembly having cognizance of matters relating to public health, to the
270 select committee of the General Assembly having cognizance of
271 matters relating to children and to the state agency designated by the
272 Governor as being responsible for reducing the rate at which tobacco
273 products are being sold to persons under eighteen years of age.

274 Sec. 11. Section 21a-46 of the general statutes is repealed and the
275 following is substituted in lieu thereof:

276 Each vending machine used in dispensing merchandise or
277 performing service in this state and not included under the provisions
278 of [subsection (b) of section 12-289 or] subsection (a) of section 21a-37
279 shall bear in a conspicuous manner the name and address of the owner
280 or operator thereof, and a telephone number which may be called for
281 service at any hour of the day.

282 Sec. 12. Section 21a-47 of the general statutes is repealed and the
283 following is substituted in lieu thereof:

284 Any person who violates any provision of [subsection (b) of section
285 12-289,] subsection (a) of section 21a-37 or section 21a-46 shall be fined
286 not less than fifty dollars for each machine which is the subject of such
287 violation.

288 Sec. 13. Sections 12-289 and 12-289a of the general statutes are
289 repealed."